

**CITY PLANNING COMMISSION  
MINUTES  
FEBRUARY 9, 2010**

1. **CALL TO ORDER** – Rew called the meeting to order at 6:00 p.m.

2. **ROLL CALL**

Members Present: Bragg, Dickerson, Graham, Hartman, Milford, Ozaydin, Rew, Schoeppner and VanHouten  
Absent: Gould and White  
Staff: Brown, Malmquist and Wade

3. **ADOPTION OF AGENDA**

Motion by Milford, second by Bragg to adopt the agenda as presented. Motion carried by unanimous voice vote.

4. **APPROVAL – MINUTES OF THE NOVEMBER 10, 2009 MEETING**

Motion by Bragg, second by Ozaydin to approve the minutes as written. Motion carried by unanimous voice vote.

5. **PROOF OF PUBLICATION** – Brown

6. **REVIEW OF MEETING PROCEDURES** – Rew

7. **PUBLIC HEARINGS**

A. CASE #AP-10-001: Public hearing on the request of Gary and Beverly Golden to appeal the decision of the Community Development Department to deny an administrative parcel split of a 4.756 acre parcel located in the Easterly 326.1' of the North 496' of Lot 2, in the SE¼ NE¼ of Section 20-75-43 and the South 396' of the North 616' of Lot 4, west of the roadway in the SW¼ NW¼ of Section 21-75-43. Location: 2330 Railroad Highway.

Mike Winter, 541 6<sup>th</sup> Avenue, representing the applicant Gary Golden, asked if Commissioners had the opportunity to visit the site. Most acknowledged they had. Winter showed the picture of the property from the Pottawattamie County Assessor's website. He explained that a significant amount of fill material had to be hauled onto the site to elevate it from the floodplain. He stated that his client has completed projects resulting in approximately \$2.5 Million in tax base for the City and that he has never requested any type of funding incentive from the City. He further stated that the cost to install the approved septic systems on the property was \$18,000. He also paid MidAmerican Energy to relocate utility poles in order to accommodate the controlled access from Railroad Highway. The cost to extend water to the property was approximately \$15,000. Sanitary sewer is more than one-half mile away and is not feasible to extend. He said that the project his client completed on 35<sup>th</sup> Street cost more than \$17,000 to extend sanitary sewer. Winter said his client has been a good citizen and has completed projects resulting in more than \$16,000 in real estate taxes annually.

Winter said that Michael Brenneman, the client's engineer, met with Don Gross to discuss the parcel split. He stated it took Gross more than 3 weeks to respond to the request. The construction schedule had already been set and they could not wait any longer. The parcel split application was withdrawn at that time and the applicant moved forward with the project. Winter said that his client tried to sell the property as one parcel and was unsuccessful. Winter explained that Golden worked with the Public Works Department and the Health Department to comply with all requirements. Winter said the reason the Planning Commission has the ability to overturn an administrative decision is that in some cases the requested outcome is warranted.

Rew asked why the application was withdrawn? Winter said the engineer withdrew the application and proceeded with the appropriate permitting process so the project could begin.

Milford asked where the septic tanks were in relation to the buildings and requested parcel split. Winter said they were on the west side of the buildings. Malmquist provided the Commission with the application and response date(s) from the previous requests to split the parcel. Ozaydin asked if Gross's reason for denying the previous requests was the same as the current reason for denial. Malmquist said yes. Winter said that the split does not impact anyone negatively. Rew asked if any circumstance has changed. Malmquist said no, that the property is commercial and that sanitary sewer will not be extended and therefore a commercial subdivision at that location could not be served by a minimum level of services.

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Milford asked if it was known that sewer was not available. Malmquist said yes, and that the septic systems were approved by the Health Department. Wade said the septic systems, if appropriately designed and installed would also be approved today. A single commercial parcel that cannot be served with sewer would be allowed to have a septic system today. It is because the request is to split the property and create a subdivision that it is not consistent with the Subdivision Ordinance. Wade said they moved forward with building permits without a parcel split. Hartman noted it is similar to a residential project in that if services cannot be extended, a subdivision will not be approved. Malmquist said that is correct.

Rew asked if the requested split was to accommodate sale of the property. Winter said yes. Rew asked if there was a septic system for each building. Golden said yes. Malmquist showed a layout provided by the Health Department that showed only two systems, not three. Winter said the exhibit was not correct because his client watched all three get installed. Wade said that each unit would have to be independently served in order to split the property. Winter said there were three systems and that the only shared amenity was the driveway. Rew asked what the cost would be to extend sanitary. Golden said he did not know, but that the City said it would not be extended. He said that if you are more than 200 feet from a main you do not have to extend it. He said it cost more than \$25,000 to extend it at his 35<sup>th</sup> Street project.

Graham asked if a survey would be required if the property was split. Malmquist said yes. Graham asked who pays for the survey. Malmquist said the applicant.

Rew said he was concerned that if approved it would set a precedent for other commercial subdivisions. Graham asked what would happen if a survey showed it could be split to meet all requirements. Malmquist said we cannot know unless a survey is provided. She added that it probably would meet the setback requirements but the more likely issue would be the separation between structures. Rew restated that if sanitary sewer were available the split would have likely been approved administratively. Wade said it was likely, but that sewer is not available. Graham asked if the site was conforming today. Malmquist said yes.

Hartman noted the staff report discussed the requirement to block one of the drive locations. Malmquist said the driveway discussed did not meet minimum standards and that part of permit approval was that it be barricaded so that it could not be used.

Hartman stated that the role of the Planning Commission is to review cases based on the orderly growth of the community. He stated he appreciated Mr. Golden's work in the community however he did not think it is appropriate to set a precedent of allowing commercial subdivisions that are not fully served. VanHouten agreed.

Golden said that utilities are not there and that they never will be there.

#### PLANNING COMMISSION ACTION

Motion by VanHouten, second by Milford to recommend upholding the administrative decision to deny the parcel split because the requested parcel split circumvents the subdivision procedures by allowing the creation of two commercial zoned parcels that cannot be improved to minimum City standards and because the request is not consistent with the Subdivision Ordinance.

VOTE: AYE – Bragg, Dickerson, Graham, Hartman, Milford, Ozaydin, Rew, Schoeppner and VanHouten. NAY –None. ABSTAIN – None. ABSENT - Gould and White. Motion carried.

Rew thanked the Commission for their thoughtful consideration of the request. Golden requested the Chair allow him to address the Commission. Rew allowed the request. Golden said the Commission's decision was not correct. If the septic systems were not sufficient, then the City should not have allowed them. He said he believed the City was in the process of trying to pass a law that anyone developing within two miles be required to have sewer. Rew said that Golden may not be trying to circumvent the process, but that some might and they must be treated consistently. Golden said that his request on 15<sup>th</sup> Street was also rejected. He said he is a small business person trying to make a living. He said the decision was wrong and that the Commissioner's will have to live with it. He said that he has brought new business to Council Bluffs and wonders if anyone appreciates that effort.

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B. CASE #ZC-10-001: Public hearing on the request of the Community Development Department to rezone Lots 5 through 10, Block 14 and all of Block 15, Beer's Addition, Blocks 40 and 41, Beer's Subdivision and Block 3, McMahon, Cooper and Jefferis Addition from I-1/Light Industrial to A-2/Parks, Estates and Agricultural District. Location: Between 2<sup>nd</sup> Avenue and 5<sup>th</sup> Avenue, from South 12<sup>th</sup> Street to South 14<sup>th</sup> Street/Indian Creek.

Malmquist, representing the Community Development Department, said that most of the property involved is City owned or is railroad property. Rew asked how the Mid City project is progressing. Malmquist said as planned.

#### PLANNING COMMISSION ACTION

Motion by Schoeppner, second by Bragg, to recommend rezoning Lots 5 through 10, Block 14 and all of Block 15, Beer's Addition, Blocks 40 and 41, Beer's Subdivision and Block 3, McMahon, Cooper and Jefferis Addition from I-1/Light Industrial to A-2/Parks, Estates and Agricultural District.

VOTE: AYE – Bragg, Dickerson, Graham, Hartman, Milford, Ozaydin, Rew, Schoeppner and VanHouten. NAY –None. ABSTAIN – None. ABSENT – Gould and White. Motion carried.

C. CASE #ZC-10-002: Public hearing on the request of the Community Development Department to rezone Block 4, McMahon, Cooper and Jefferis Addition and Auditor's Subdivision of Lots 8 and 9, Block 4, McMahon, Cooper and Jefferis Addition and Block 20½, Everett's Addition from I-1/Light Industrial to R-3/Low Density Multi-family Residential. Location: Between 5<sup>th</sup> Avenue and 6<sup>th</sup> Avenue, from South 13<sup>th</sup> Street to South 14<sup>th</sup> Street/Indian Creek.

Malmquist, representing the Community Development Department, stated that the request is a continuation of the previous request, except this rezoning would be to multi-family residential. She said the rezoning will make the existing residential uses conforming. She said the storage areas would become legally non-conforming.

Bruce Kelley, owner of 1324 6<sup>th</sup> Avenue, asked why the City wants to rezone the area. He said there is only one other business located in the area and that it is one of the few locations zoned for light industrial use. Kelley asked if the rezoning would prevent him from selling the property. Malmquist said it would not prevent him from selling the property. VanHouten asked which property Kelley owned. Kelley showed him on the map. Kelley asked what the City is tearing down on 5<sup>th</sup> Avenue. Kelley said he was allowed to place a fence on City owned property years ago and has since been ordered to tear it down for the bike trail. He asked if he could add on to his business. Malmquist said if the property is rezoned he cannot expand the business or add-on, but that the current business could continue.

Hartman noted the staff report said housing would be constructed. Kelley said he heard it would be low income housing and some would be used for parks and open space. VanHouten asked if he planned to expand. Kelley said yes. VanHouten asked Malmquist if there were other places with appropriate zoning for the use. Malmquist said yes. Hartman explained the rezoning would restrict his expansion and that if the property were destroyed by more than 50% then it could not be rebuilt.

Rew asked if Kelley was against the rezoning. Kelley said yes. He said it would cost more than \$200,000 to build the same building somewhere else that is zoned appropriately.

Graham asked if part of the area could be removed from the rezoning. Malmquist said they could make some other recommendation, but that staff believes the requested rezoning is appropriate. Hartman confirmed that it would make the existing residential uses conforming.

#### PLANNING COMMISSION ACTION

Motion by Dickerson, second by Schoeppner, to recommend rezoning Block 4, McMahon, Cooper and Jefferis Addition and Auditor's Subdivision of Lots 8 and 9, Block 4, McMahon, Cooper and Jefferis Addition and Block 20½, Everett's Addition from I-1/Light Industrial to R-3/Low Density Multi-family Residential.

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VOTE: AYE – Bragg, Dickerson, Graham, Milford, Ozaydin, Rew and Schoeppner. NAY – Hartman and VanHouten. ABSTAIN – None. ABSENT – Gould and White. Motion carried.

D. CASE #ZT-10-001: Public hearing on the request of Community Development Department to amend Chapter 15.31 Communication Towers of the Municipal Code (Zoning Ordinance) by adding a requirement to assure non-interference with emergency communication transmissions and to change an internal reference.

Malmquist, representing the Community Development Department, said that the Fire Chief and County Sheriff's Department approached the department about requiring an assurance that future telecommunication towers would not interfere with emergency service telecommunications. She said the proposed text is basically the same as the text recently adopted by Pottawattamie County. She said the internal reference related to a necessary change in the Conditional Use Permit chapter.

#### PLANNING COMMISSION ACTION

Motion by VanHouten, second by Hartman, to recommend amending Chapter 15.31 Communication Towers of the Municipal Code (Zoning Ordinance) by adding a requirement to assure non-interference with emergency communication transmissions and to change an internal reference.

VOTE: AYE – Bragg, Dickerson, Graham, Hartman, Milford, Ozaydin, Rew, Schoeppner and VanHouten. NAY –None. ABSTAIN – None. ABSENT – Gould and White. Motion carried.

E. CASE #ZT-10-002: Public hearing on the request of the Community Development Department to amend Chapter 15.05 A-2/Parks, Estates and Agricultural District of the Municipal Code (Zoning Ordinance) to add 'Secondary Airports' as a principal use and to change an internal reference.

Malmquist, representing the Community Development Department, said the City recently annexed several hundred acres that will likely be rezoned to agricultural. She said the current code does not allow airports. Malmquist explained the different types of airport classifications.

#### PLANNING COMMISSION ACTION

Motion by Milford, second by Bragg, to recommend amending Chapter 15.05 A-2/Parks, Estates and Agricultural District of the Municipal Code (Zoning Ordinance) to add 'Secondary Airports' as a principal use and to change an internal reference.

VOTE: AYE – Bragg, Dickerson, Graham, Hartman, Milford, Ozaydin, Rew, Schoeppner and VanHouten. NAY –None. ABSTAIN – None. ABSENT – Gould and White. Motion carried.

#### 8. OTHER BUSINESS

A. City Council update. Wade said that the Council recently took action on the South 24<sup>th</sup> Street project up to the Sapp Brothers property. He said that the Council also acted on several items to move the riverfront park component of the River's Edge project forward.

B. Other items of interest – None.

9. **ADJOURNMENT** – Rew adjourned the meeting at 7:15 p.m.